

ABSTRACT

Foreign Fighters and the Challenges Associated with their Criminal Accountability

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The presented thesis focuses on the phenomenon of foreign fighters - a topic that has been for years appearing not only on cover pages of newspapers, but it is mainly a frequent subject of legal discussions and new legislations. The major reason is the connectivity of this phenomenon with the terrorism. The aim of this work is a comprehensive charting/analysing and elucidating of questions who the foreign fighters are, what their status is in the framework of the international law and what the possibilities of their criminal accountability are.

In the general part, the work introduces and refines the concept of foreign fighters and foreign terrorist fighters. It offers both the historical and modern perspective of the participation of persons in armed conflicts abroad. It is followed by presenting the modern efforts to define the term of foreign fighters and explaining why the phenomenon of the foreign fighters and the measures against them are not new. The work also outlines the motivation of people to leave and fight in remote parts of the world. Legislative measures concerning foreign terrorist fighters on the universal and regional level are discussed in detail. The age-old effort to adopt a general definition of terrorism is also presented.

Human rights and their possible violation in connection with terrorism are a frequent subject of legal debates and court decisions at the international and national level. Several examples from the decision-making practise of the European court for human rights draw attention to the arbitrary approach of some states in the selection and implementation of measures to combat terrorism and alleged terrorists.

The issue of the international humanitarian law (IHL) cannot be omitted in this thesis. It seeks to answer the question of the status of fighters (including foreign ones) in armed conflicts and the possibility of their individual criminal responsibility. The problematic relationship between counterterrorism and IHL is also analysed.

The fundamental focus of the presented work is the analysis of the case-law of selected national courts and a summary of the current practice of prosecutions of persons designated as foreign (terrorist) fighters. The analyses show that national judicial organs are facing difficult legal and practical challenges. Many countries fight this phenomenon in the light of terrorist legislation. Gradually, however, several prosecutions for war crimes have been recorded. The courts have become aware that the prosecuted crimes took place within the

framework of an armed conflict. A new promising trend of cumulative charging has been also introduced. Thus, the foreign fighters are accused not only for a terrorist act (often for participating in terrorist organisation) but also for international crimes, namely crimes against humanity, war crimes and genocide. This approach can lead to the inclusion of the full spectrum of all crimes committed. This, however, concerns the prosecution of crimes committed in Syria and Iraq. The prosecution of foreign fighters leaving for Ukraine is more complicated. The reviewed case-law mainly shows inconsistency in understanding of this conflict and the status of foreign fighters in it.